

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

FRANCISCO DURAN AVILA,)
Plaintiff,)
v.) 1:09CV1001
UNITED STATES OF AMERICA,)
Defendant.)

RECOMMENDATION OF
UNITED STATES MAGISTRATE JUDGE

This matter comes before the Court on Plaintiff Avila's Motion [Doc. #9] seeking refund of the \$55.07 he submitted to the Court on April 12, 2010, as the initial partial filing fee payment in this Motion for Return of Property. He was granted leave to proceed in forma pauperis. However, Plaintiff later filed a Motion [Doc. #7] to voluntarily dismiss the action. The Court granted [Doc. #8] Plaintiff's request to dismiss the action. He has now filed this Motion seeking return of the \$55.07 partial filing fee that he paid some 5 years ago.

A Motion for Return of Property is a civil action for which the standard civil case filing fee must be paid, although prisoners may do so in installments pursuant to 28 U.S.C. § 1915(b)(1). See United States v. Jones, 215 F.3d 467 (4th Cir. 2000); United States v. Garcia, 65 F.3d 17, 19 n.2 (4th Cir. 1995); see also United States v. Beverly, 365 F. App'x 462 (4th Cir. 2010). However, Section 1915 does not provide the Court with authority to refund filing fees that have already been paid. See 28 U.S.C. § 1915(b)(1) (“[I]f a prisoner brings a civil action . . . in forma pauperis, the prisoner shall be required to pay the full amount of a filing fee.”) Plaintiff does not cite any authority that would allow the Court to refund the filing fee, and other courts faced with similar requests have concluded that such filing fees may not be refunded. See, e.g.,

Grindling v. Martone, No. CIV 12-00361, 2012 WL 4502954 at *2 (D. Haw. Sept. 28, 2012) (“[N]umerous courts have found that the voluntary dismissal of an action, whether filed by a prisoner or not, does not entitle the litigant to a refund of filing fees.”) (citing cases); James v. Cropp, No. C12-5159 RJB/KLS, 2012 WL 1669727 (W.D. Wash. April 13, 2012) (denying request for refund following voluntary dismissal and noting that “[t]he decision to file and prosecute this case was made by Plaintiff before he filed this case. Having filed this case, Plaintiff and the Court are both statutorily limited by the strictures of 28 U.S.C. § 1915.”).

IT IS THEREFORE RECOMMENDED that Plaintiff's Motion [Doc. #9] for return of the partial filing fee be denied.

This, the 6th day of May, 2015.

/s/ Joi Elizabeth Peake
United States Magistrate Judge